

U.S. Department of Energy Orders Self-Study Program

DOE O 442.1

DEPARTMENT OF ENERGY
EMPLOYEE CONCERNS PROGRAM



ALBUQUERQUE OPERATIONS OFFICE

**DOE O 442.1
DOE EMPLOYEE CONCERNS PROGRAM
FAMILIAR LEVEL**

OBJECTIVES

Given the familiar level of this module and the resources listed below, you will be able to perform the following:

1. State three examples of criteria that should be used to assess the significance of an employee's concern.
2. Describe three classifications of employee occupational safety and health concerns that are used for determining safety significance.
3. Discuss the objective of implementing DOE O 442.1, DOE Employee Concerns Program.
4. Discuss the four alternatives for processing concerns.
5. Discuss the purpose of mediation and concern review panels.
6. Discuss four requirements for an Employee Concerns Program.
7. Explain the conditions under which an employee concern case is designated as closed.

Note: If you think that you can complete the criterion test for this level without working through the instructional material and/or the examples, ask the course manager for the criterion test now. There is no required practice for this module.

Change No: 0 DOE O 442.1 Level: Familiar Date: 6/15/01

RESOURCES

DOE O 442.1, DOE Employee Concerns Program, 2/1/99.

DOE G 442.1-1, DOE Employee Concerns Program Guide, 2/1/99.

Note: The following references, annotated in DOE O 442.1, may be required to answer questions in the practice and criterion test for this module.

Price-Anderson Amendments Act of 1988, Public Law 100-408.

5 U.S.C. 552, Freedom of Information Act of 1974, Public Law 93-502, as amended.

5 U.S.C. 552a, Privacy Act of 1974, Public Law 93-579, as amended.

INTRODUCTION

The familiar level of this module is divided into two sections. In the first section, we will discuss the objectives, requirements, responsibilities, and definitions that are contained in the Order. In the second section, we will discuss the Guide. There is only one level of instruction for this Order. You will not be required to complete a practice for this module.

Before continuing, you should obtain a copy of DOE O 442.1, DOE Employee Concerns Program, and its companion guide. Copies of these documents are available on the Office of Management and Administration's Web site at <http://www.directives.doe.gov> or through the course manager. It is not necessary to obtain copies of the other resources listed for this module. However, you should be familiar with these resources. You may need to refer to these documents to complete the examples and criterion test.

SECTION 1 – THE ORDER

In this section, we will summarize the objective, requirements, responsibilities, and definitions contained in the Order.

OBJECTIVE

DOE's objective in implementing DOE O 442.1 is to establish a DOE Employee Concerns Program (ECP) that ensures employee concerns related to the environment, safety, health, and management of DOE programs and facilities are addressed through

- prompt identification, reporting, and resolution of employee concerns regarding DOE facilities or operations in a manner that provides the highest degree of safe operations;
- free and open expression of employee concerns that results in an independent, objective evaluation; and
- supplementation of existing processes with an independent avenue for reporting concerns.

REQUIREMENTS

The ECP must

- interface with other DOE and DOE contractor ECPs; external regulatory bodies that require employee concerns programs; Headquarters Office of Employee Concerns; and labor organizations, where applicable;
- establish documented program plans describing methods and processes used to implement program requirements;
- require that DOE and DOE contractor employees be informed (1) of the ECP process; (2) that employees are encouraged to first seek resolution with first-line supervisors or through existing complaint or dispute resolution systems, but that they have the right to report concerns through the DOE ECP; and (3) that management prohibits reprisals against or intimidation of employees who have reported concerns; and
- provide and publicize a 24-hour hot line.

Concerns are investigated through the ECP, referred to other offices and tracked by the ECP, or transferred to another DOE or contractor organization when the issues are outside the scope of the ECP.

An employee concern case is designated as closed when

- corrective actions have been identified and assigned to management for completion,
- a completed investigation indicates that no corrective action is required,
- the subject is outside the scope of the ECP,
- the ECP determines that the issues are frivolous, and
- the concerned employee has been notified that the concern has been closed.

The ECP must prepare and maintain concern logs, concern reports, concern investigations management assessment results, and quarterly and annual reports. The reports must address the number of employee concerns, the nature of the concerns, and the resolutions.

RESPONSIBILITIES

The field element manager is responsible for assigning the responsibilities of the ECP to a management position.

ECP managers

- Develop and submit ECP implementation documentation to the Secretarial Officer or field element manager for approval.
- Implement the approved ECP and ensure concerns are processed as required by the Order.
- Publicize ECP processes, employee rights and responsibilities to report concerns through these processes, and management's intolerance for reprisals against employees who have reported concerns.
- Maintain an employee concerns tracking system and a secure filing system.
- Determine the disposition of all concerns.
- Assist in evaluation and resolution of employee concerns.

- Review and evaluate responses from other organizations to which concerns were referred, request further action when necessary, and provide feedback to those organizations that have a need to know about the outcome of the ECP process.
- Document that an individual, office, or organization has accepted responsibility for minimizing, correcting, and preventing recurrence of concerns that have been substantiated through the ECP process.
- Prepare quarterly and annual reports and review them for lessons learned and possible adverse trends.
- Use self-assessment or outside review to conduct management assessments of their ECPs; assess the results with the Headquarters or field element manager; and take any necessary actions to improve program operations.
- Coordinate with DOE contracting officers to determine the existence of contract requirements for the establishment of contractor ECPs and the means and criteria by which such contractor ECPs will be evaluated.
- Advise appropriate levels of management when actions are either ineffective or not resolved.

Additional responsibilities for the Director, Office of Employee Concerns; the Assistant Secretary of Environment, Safety, and Health; and the Director of Human Resources Management are included in section 5 of the Order. Please refer to that document if you require more information about responsibilities for the ECP.

DEFINITIONS

Several definitions are included in the Order. We will cover the commonly used ones here; for additional definitions, consult the Order.

Conflict of Interest. A situation in which the person responsible for investigating an employee concern could be associated either directly or indirectly with that concern, or an investigative task is assigned to a person who might have submitted the concern.

Change No: 0 DOE O 442.1 Level: Familiar Date: 6/15/01

Employee Concern. A good faith expression by an employee that a policy or practice of DOE or one of its contractors or subcontractors should be improved, modified, or terminated. Concerns can address issues such as health, safety, the environment, management practices, fraud, waste, or reprisal for raising a concern.

Imminent Danger Concern. Any condition or practice in any workplace that creates a danger that could reasonably be expected to cause death or serious physical harm immediately or before the onset of such danger could be eliminated through the normal procedural mechanism.

Note: You do not have to do example 1 on the following pages, but it is a good time to check your skill and knowledge of the information covered. You may do example 1 or go to section 2.

EXAMPLE 1

Using the familiar level of this module and the resources, complete the following exercises.

1. State the purpose of implementing DOE O 442.1.

2. Define the following terms.

Employee concern

Conflict of interest

Change No: 0 DOE O 442.1 Level: Familiar Date: 6/15/01

3. Identify the program specifically omitted from the requirements of DOE O 442.1.

Note: When you are finished, compare your answers to those contained in the example 1 self-check. When you are satisfied with your answers, go to section 2.

EXAMPLE 1 SELF-CHECK

1. State the purpose of implementing DOE O 442.1.

The purpose is to establish a DOE Employee Concerns Program (ECP) that ensures employee concerns related to the environment, safety, health, and management of DOE programs and facilities are addressed through

- prompt identification, reporting, and resolution of employee concerns regarding DOE facilities or operations in a manner that provides the highest degree of safe operations;
- free and open expression of employee concerns that results in an independent, objective evaluation; and
- supplementation of existing processes with an independent avenue for reporting concerns.

2. Define the following terms: employee concern, conflict of interest.

Employee concern

A declaration, statement, or assertion of impropriety or inadequacy associated with the environment, safety, and health (ES&H) aspects of DOE-managed and contractor-managed activities, the validity of which has not been established.

Conflict of interest

A situation in which the person responsible for investigating an employee concern could be associated either directly or indirectly with that concern, or an investigative task is assigned to a person who might have submitted the concern.

3. Identify the program specifically omitted from the requirements of DOE O 442.1.

Facilities and activities conducted under Executive order 12344, Naval Nuclear Propulsion Program (42 U.S.C. 7158, note), are excluded from this Order.

SECTION 2 – THE GUIDE

In this section we will discuss the purpose of the ECP, data collection, program access and tracking, confidentiality, priority designations of occupational health and safety concerns, and alternative dispute resolution.

PURPOSE OF THE ECP

DOE recognizes that free and open expression of DOE, contractor, and subcontractor employee concerns is essential to safe and efficient accomplishment of DOE's missions. DOE employees and any contractor or subcontractor fulfilling DOE's mission have the right and responsibility to report concerns relating to the environment, safety, health, or management of Department operations. The ECP is designed to

- encourage open communication,
- inform employees of the proper forum for consideration of their concerns,
- ensure employees can raise issues without fearing reprisal,
- address employee concerns in a timely and objective manner, and
- provide employees with an avenue for consideration of concerns that fall outside existing systems.

DATA COLLECTION

When a concern is received, the person receiving the concern obtains as much information as possible from the concerned employee. The following information is obtained when possible:

- full name of the concerned employee,
- complete mailing address,
- telephone number where the employee can be reached,
- position or relationship to the employer,
- nature of the concern,
- availability of employer processes to address the concern,

- previous attempts to have the concern addressed within the concerned employee's organization, and
- whether the concerned employee is requesting confidentiality.

ECP personnel create a written record, preferably signed by the concerned employee, reflecting the scope and substance of the concern. If the concerned employee declines to provide the requested information, the individual receiving the concern may attempt to establish the reason but should not discourage the employee from using the process by demanding additional detail.

PROGRAM ACCESS AND TRACKING

The success of an ECP office depends on the visibility of management's belief in an employee's right to raise concerns without the fear of retaliation. To ensure this visibility, the head of the Headquarters program office or field element is encouraged to remind all employees annually of the availability and purpose of the ECP.

The ECP office should place posters in conspicuous locations to inform employees of the existence of the ECP, the ECP office telephone number, and the availability of an ECP 24-hour-access hot line. The listing of telephone numbers and any e-mail address in the DOE telephone book and on posters serves to advise employees of the availability of, and means to access, the ECP.

Information regarding employee concerns is maintained in a tracking system. Because of the nature of the information, it should be maintained according to existing rules applicable to sensitive materials, as well as the Privacy Act.

CONFIDENTIALITY

The extent to which confidentiality can be granted depends on

- inherent impediments to an investigation's thoroughness due to granting confidentiality;
- the extent to which a particular employee may be identified with the concerns as the result of previous activities;

- the extent to which the concerns are being resolved through litigation; and
- the ability to protect the individual's identity because the employee concerns records may be subject to disclosure under the Privacy Act or the Freedom of Information Act.

ECP personnel should request the following information from the concerned employee to determine whether confidentiality can be maintained once granted:

- Has the individual provided the information about the concern to anyone else, and is the employee's pursuit of a resolution of the particular concern common knowledge to other employees?
- Why does the individual desire confidential source status?
- Does it appear that the individual who caused the condition or committed the violation that is the subject of the concern is likely to be subject to civil or criminal prosecution?
- Is the nature of the concern personal to the concerned employee to such a degree that the investigation of the concern would readily identify the concerned employee as the source of the concern?

Confidentiality will not be extended to any person who in the course of his or her employment, or due to the nature of his or her position, is required to provide such information. The inspector or investigator will advise each person to whom confidentiality is granted that such grant of confidentiality is conditional, not absolute.

PRIORITY DESIGNATION OF OCCUPATIONAL HEALTH AND SAFETY CONCERNS

Concerns are designated for processing according to the criteria established by the Office of Environment, Safety, and Health (ES&H). An employee concern involving an imminent danger concern or serious condition will be immediately brought to the attention of the appropriate line manager and the ES&H program office for evaluation and action. The ECP must ensure that an initial determination of the health and safety significance of the concern is performed. Priorities for resolution must be established based on determination of the risk of the concern. Guidance for safety significance is provided below.

Imminent Danger Concern

An imminent danger concern is any condition or practice in any workplace that creates a danger that could reasonably be expected to cause death or serious physical harm immediately or before the onset of the danger could be eliminated through the normal procedural mechanism. ES&H requires that such concerns be investigated within 24 hours.

Serious Condition

A serious condition is a hazard, violation, or condition that causes a substantial probability that death or serious physical harm, property loss, and/or environmental impact could result. ES&H requires that such concerns be investigated within 3 working days.

Other-Than-Serious Conditions

Other-than-serious conditions are hazards, violations, or conditions that may not result in death or serious physical harm, property loss, and/or environmental impact but may have a direct and immediate relationship to worker safety and health or the environment. ES&H requires that such concerns be investigated within 20 working days.

The following ES&H guidelines should be used to assess the significance of the concern. The degree to which a concern involves an imminent danger or condition is judged by determining whether the concern involves any of the following criteria:

- initiation of work in the face of identified environmental, safety, or health concerns that could result in an immediate or near-term threat to the safety or health of the public or workers;
- continuation of operations in the face of inoperable or deficient environmental, safety, and health equipment, monitoring instrumentation, or systems;
- violations of the Price-Anderson Amendments Act enforcement authority; criminal acts involving nuclear safety matters; willful violations of regulations, DOE directives, operating procedures, or specifications; or other criminal acts;
- deficiencies observed in the normal reporting system;

- collection, dissemination, and recording of inaccurate or falsified environmental, safety-, or health-related data; and
- material misrepresentations to inspectors, auditors, or reviewers when performing official duties.

ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution processes are effective mechanisms for resolving concerns. These processes can be used to resolve differences before conducting reviews or investigations since they provide a method for parties to express their differences with the aid of a third party. Mediation and concern review panels are examples of alternative dispute resolution processes.

Mediation

Mediation is an effective and efficient method for resolving disputes that range from interpersonal differences to complex business disputes. Various resources are available for mediation dispute resolution, including the use of mediators from the Federal Mediation and Conciliation Service or other Government agencies, or private individuals who serve as mediators. ECP managers who need assistance in arranging for mediation services can call on the Headquarters Office of Employee Concerns, which works with the Director of the Office of Dispute Resolution, to make mediation services available in a timely manner.

Concern Review Panels or Differing Professional Opinion Panels

Panels can be designated by the Program Secretarial Officer, the head of the field activity, or ECP managers working with the concerned employee and appropriate offices. Membership on the panels, when possible, should be voluntary and for a specific time frame. Panels should have the ability to provide input to the action plan, review the concern, and make specific recommendations addressing each concern. Employers may also establish panels to deal with concerns raised by employees.

Based on the nature of the concern, panels may be composed of employees, supervisors, managers, representatives from human resources, outside experts or stakeholders, and someone from the ECP office. Panels may be convened to review concerns involving

Change No: 0 DOE O 442.1 Level: Familiar Date: 6/15/01

issues relating to health, safety, or quality; allegations of harassment, intimidation, or retaliation for protected activities; issues requiring external expertise and resources for evaluation; or concerns that cross organizational or program boundaries.

Note: You do not have to do example 2 on the following page, but it is a good time to check your skill and knowledge of the information covered. You may do example 2 or ask the course manager for the criterion test.
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EXAMPLE 2

1. Discuss the factors that determine to what extent confidentiality can be granted.
2. Explain how an ECP manager arranges for mediation services.
3. Differentiate between an imminent danger concern and a serious concern.

Note: When you are finished, compare your answers to those contained in the example 2 self-check. When you are satisfied with your answers, ask the course manager for the criterion test.

EXAMPLE 2 SELF-CHECK

1. Discuss the factors that determine to what extent confidentiality can be granted.

The factors are

- inherent impediments to an investigation's thoroughness due to granting confidentiality;
- the extent to which a particular employee may be identified with the concerns as the result of previous activities;
- the extent to which the concerns are being resolved through litigation; and
- the ability to protect the individual's identity because the employee concerns records may be subject to disclosure under the Privacy Act or the Freedom of Information Act.

2. Explain how an ECP manager arranges for mediation services.

The ECP manager can call the Headquarters Office of Employee Concerns to arrange mediation services.

3. Differentiate between an imminent danger concern and a serious concern.

An imminent danger concern is any condition that creates a danger that could cause death or serious physical harm immediately or before the onset of the danger could be eliminated through the normal procedure.

A serious concern is a condition that causes a substantial probability that death or serious physical harm, property loss, and/or environmental impact could result.